

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: November 14, 2006 DEPT. 71 REPORTER A: CSR#

PRESENT HON. RONALD S. PRAGER REPORTER B: CSR#

JUDGE

CLERK: K. Sandoval

**BAILIFF: REPORTER'S ADDRESS: P.O. BOX 120128
SAN DIEGO, CA 92112-4104**

**RULING AFTER NOV. 9, 2006 ORAL ARGUMENT-CENTER POINT -RELIANT
IN RE: JCCP 4221/4224/4226&4428 – Natural Gas Anti-Trust Cases (Price Indexing)**

The attached Court's ruling regarding **FINAL RULING AFTER ORAL ARGUMENT ON THE TENTATIVE RULING –MOTION TO QUASH ON CENTERPOINT-RELIANT** applies to all cases listed as follows:

4221-00022	COUNTY OF SANTA CLARA vs SEMPRA ENERGY
4221-00023	CITY AND COUNTY OF SAN FRANCISCO vs SEMPRA ENERGY
4221-00024	COUNTY OF SAN DIEGO vs SEMPRA ENERGY
4221-00026	CITY OF SAN DIEGO vs SEMPRA ENERGY
4221-00027	TAMCO vs DYNEGY INC
4221-00033	COUNTY OF ALAMEDA vs SEMPRA ENERGY
4221-00034	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA vs RELIANT ENERGY SERVICES INC
4221-00035	SCHOOL PROJECT FOR UTILITY RATE REDUCTION vs SEMPRA ENERGY
4221-00036	ASSOCIATION OF BAY AREA GOVERNMENTS vs SEMPRA ENERGY
4221-00037	OWENS-BROCKWAY GLASS CONTAINER INC vs SEMPRA ENERGY
4221-00039	CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER vs RELIANT ENERGY SERVICES INC
4221-00040	SACRAMENTO MUNICIPAL UTILITY DISTRICT vs RELIANT ENERGY SERVICES INC
4221-00042	PODESTA vs ENCANA ENERGY SERVICES INC
4221-00044	COUNTY OF SAN MATEO vs SEMPRA ENERGY
4221-00046	PABCO BUILDING PRODUCTS vs DYNEGY INC
4221-00047	BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY vs DYNEGY INC
4221-00043	NURSERYMAN'S EXCHANGE OF HALF MOON BAY vs SEMPRA ENERGY

The Court confirms its tentative rulings of November 9, 2006 and July 24, 2006. The Court notes that the Class Plaintiffs have withdrawn their opposition to the motion.

The Court remains convinced that it has personal jurisdiction over Defendants CenterPoint Energy, Inc. and Reliant Energy, Inc. (both Former and New). There is sufficient evidence to support jurisdiction on any one or all of the following bases: (1) specific jurisdiction, (2) agency, (3) the representative services doctrine and (4) successor in interest.

In summary, the tentative ruling found sufficient evidence to support specific jurisdiction over Former REI as well as general jurisdiction over Former REI based on theories of agency and the representative services doctrine. The court found CenterPoint to be the successor in interest to Former REI and thereby subject to jurisdiction. The tentative ruling found sufficient evidence to support specific jurisdiction over New REI as well as general jurisdiction based on both agency and the representative services doctrine as between New REI and RES.

The court asked for additional briefing on successor liability and the representative services doctrine as well as directing the court's attention to the most relevant evidence of the Defendants' contacts with California. CenterPoint focused its attention on defeating successor liability. New REI restated its position and highlighted evidence related to its own contacts on which the court had previously found jurisdiction. New REI admitted that it had assumed the unregulated business liabilities of Former REI and that jurisdiction over New REI was undisputed *if* there was jurisdiction over Former REI. No additional briefing or highlighted evidence was submitted on the issue of jurisdiction over Former REI based on Former REI's contacts with California or Former REI's agency relationship with RES or the application of the representative services doctrine as between Former REI and RES. The Court, therefore, affirms and adopts its prior ruling and reasoning finding personal jurisdiction over Former REI. Based on the reconfirmed finding of jurisdiction over Former REI and New REI's concession of successor liability, the Court finds it has personal jurisdiction over New REI.

Upon review of the evidence, the Court also affirms and adopts its prior ruling and reasoning finding New REI subject to jurisdiction based on its own contacts with and/or purposeful availment of California and its own participation in the alleged market manipulation through its control of RES. The supplemental arguments and evidence reaffirms a finding of jurisdiction based on arguments and evidence reaffirms a finding of jurisdiction based on agency. The Court finds that New REI maintained pervasive and continual control of RES in a number of ways, including but not limited to, (1) setting and raising the VAR limits; (2) Perkins' (an

REI officer) oversight of the trading activities to assure they were kept within the overall limits; (3) submission and use of the daily position reports by New REI's risk control officer; and (4) the daily sweeping of the subsidiaries' cash into REI's parent account. These activities are not consistent with a mere holding company or a parent's investor status, but rather evidence REI's significant day-to-day control over all of its subsidiaries, including RES.

The only issue remaining then is whether CenterPoint is a successor in interest to Former REI and therefore subject to the court's jurisdiction. The general rule that a predecessor company is not liable when successor company contractually assumes the predecessor's liabilities does not answer the question of whether two concurrent successor companies and the predecessor can legitimately agree that each will assume only certain aspects of the predecessor's liabilities. The question becomes more complex where the two successor companies are part of one predecessor "reorganization" rather than a buy out and that reorganization was necessary to comply with the new laws of another State. Given the unusual circumstances, can this agreement be used as a shield to defeat personal jurisdiction? The parties were unable to cite to any case law that was specifically applicable. The *Rego* case, however, is instructive for its direction that "each successor liability 'case must be determined on its own facts' [Citation]" including looking at the "totality of the unusual circumstances." *Rego v. ARC Water Treatment Company of Pa.* (3d Cir. 1999) 181 F.3d 396, 403.

However, case law does support Defendants' position that the ordinary rules of successor liability do apply even when there is a corporate reorganization rather than a buy out. The four exceptions also apply. There is no evidence or indication that CenterPoint expressly assumed the liabilities of the unregulated business side of Former REI. Those liabilities were contractually assumed by New REI. There is no evidence that Former REI's reorganization was a "sham." The reorganization was scrutinized and approved by both federal and state agencies. Further, assumption of liabilities can constitute sufficient "consideration" for a legitimate transaction. See *Beatrice Co. v. State Bd. of Equalization* (1993) 6 Cal.4th 767.

The factors generally considered for a *de facto merger* are not present. CenterPoint did not absorb Former REI or retain its name. CenterPoint did not take all of Former REI's assets without providing consideration. There is nothing to suggest that either CenterPoint or New REI are not sufficiently funded to meet the claims of creditors. CenterPoint did not continue the same enterprise as Former REI; it continued only the regulated business aspects. For the same reasons, the "mere continuation" exception would not apply.

However, CenterPoint's supplemental lodgment, Exhibit, 2 contains excerpts from the "Proposed Holding Company Formation, Notice to Shareholders." It consistently and frequently uses the term "merger agreement" when discussing the relationship between Former REI and CenterPoint. At page 12, it states that "CenterPoint Energy and Reliant Energy have entered into the merger agreement attached as Annex A" and "the board of directors recommends that Reliant Energy shareholder vote for approval of the merger agreement." [emphasis added.] The language of Defendants' own exhibit is extremely telling. The transaction as between CenterPoint and Former REI was at least a *de facto* merger if not an actual merger. Accordingly, the merger exception to successor liability applies which subjects CenterPoint to this court's jurisdiction.

The representative services doctrine applies to both New REI and to CenterPoint through Former REI. Neither New or Former REI can be termed true parent holding companies for purposes of this doctrine. They did not simply hold RES as an investment. RES was a subsidiary that was created, not acquired, by Former REI to perform a specific function of REI's overall business in the energy market. If RES were to cease to exist, REI could not simply invest in another type of subsidiary, it would need to create another subsidiary to perform the gas trading function which was a part of both Former and New REI's overall energy business. Accordingly, both Former and New REI purposefully availed themselves of the privilege of doing business in California. Imputing the jurisdictional contacts of RES to New REI and to CenterPoint through Former REI is proper. *See Sonora Diamond Corp. v. Superior Court (2000) 83 Cal.App.4th 523, 543.*

Lastly, the Court finds New REI's exhaustive argument on the legality of Ms. Zanaboni's trading activity irrelevant. Defendant cites no authority for their apparent position that if the alleged contacts with California were not illegal, jurisdiction cannot exist. The law provides only that general personal jurisdiction over a non-resident defendant be based on the contacts or activity in the forum state. Specific personal jurisdiction further requires that the cause of action relate to the contacts. Whether the activities will ultimately be found to be illegal is for the trier of fact and will determine liability but not jurisdiction.